

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

Mohamed John Akhtar and La Buca  
Restaurant, Inc. d/b/a Swing 46  
Jazz and Supper Club,

Plaintiffs,

v.

Eric M, Eisenberg, and John and Jane  
Does One through Thirty  
Defendants.

**NOTICE OF REMOVAL OF CIVIL  
ACTION**

**CIVIL ACTION No. 23-cv-06585**

Plaintiffs in the above captioned matter allege as follows:

1. Mohamed John Akhtar, hereinafter "plaintiff Akhtar," is a person and resident of the City of New York, County of New York, with a business address of 349 West 46<sup>th</sup> Street, New York, and is a plaintiff in the above captioned matter.

2. La Buca Restaurant, d/b/a Swing 46 Jazz and Supper Club, hereinafter "plaintiff La Buca Restaurant," is a New York Corporation, with a business address of 349 West 46<sup>th</sup> Street, New York, owned and operated by plaintiff Mohamed John Akhtar, and is a plaintiff in the above captioned matter.

3. For easier clarification, and where appropriate, both plaintiff Akhtar and plaintiff La Buca Restaurant, will be referred to simply as "plaintiffs."

4. Plaintiffs case was originally filed in the United District Court for the Southern District Court of New York in July 2023 and docketed as Civil Action No. 23-cv-06585.

5. Plaintiffs have been named defendants in a civil action Filed, upon information and belief, on or about October 8, 2024 in the Supreme Court of the State of New York, County of New York, titled City of New York v. Swing 46, Index No. 452761/2024. The same facts and circumstances in that case are, upon information and belief, virtually the same that has, and currently is, being litigated in this Court under Civil Action Number 23-cv-06585.

6. Plaintiff/Petitioner City of New York, in the foregoing state court action can be identified as a "John Doe One" in plaintiffs' complaint in this Court, that is the United States District Court for the Southern District of New York under Civil Action Number 23-cv-06585.

#### TIMELINESS OF REMOVAL

7. Plaintiffs do not concede that Swing 46 was properly served by the City of New York in its state court action against Swing 46. But for purposes of this removal action herein, an attempt was apparently made to serve summons and complaint upon Swing 46 on or about October 31, 2024 and again, via United State Mail, on or about November 29, 2024.

8. While plaintiffs, again, do not concede either attempt for Service by the City of New York upon Swing 46 was correctly perfected, it has made plaintiffs aware that John Doe One, that is, the City of New York, is attempting to file a separate cause of action, in another jurisdiction, in a case that has been ongoing in this Court since July 2023. Therefore, Plaintiffs John Aktar and La Buca Restaurant request for removal is timely.

9. True and complete copies of New York City's pleadings will be provided once they are made available to counsel of record for plaintiffs John Aktar and La Buca Restaurant

BASIS FOR JURISDICTION

10. This Court has original jurisdiction over this action because it involves the same case or controversy that has already been pending before the Court under Civil Action 23-cv-06585.

11. Petitioner City of New York was aware, or should have been aware, that the same facts of its case were already being addressed before this Court.

WHEREFORE, defendants file this Notice to Removal of Civil Action that is now pending, or about to be pending, in the Supreme Court of the State of New York, County of New York, as City of New York v. Swing 46, Index No. 452761/2024, from that

court to the U.S. District Court for the Southern District of New York as Civil Action 23-cv-06585.

Dated: November 30, 2024 /s/ Anthony N. Iannarelli Jr.

Anthony N. Iannarelli Jr.  
Attorney for Plaintiffs John Akhtar  
and La Buca Restaurant